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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,205	06/01/2006	Isao Ochi	20060853A	2326
513 7590 04/21/2010 WENDEROTH, LIND & PONACK, L.L.P. 1030 15th Street, N.W., Suite 400 East Washington, DC 20005-1503				
EXAMINER				
KRAUSE, ANDREW E				
ART UNIT		PAPER NUMBER		
1781				
NOTIFICATION DATE		DELIVERY MODE		
04/21/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com
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Office Action Summary

Application No.

10/581,205

Applicant(s)

OCHI, ISAO

Examiner

ANDREW KRAUSE

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 06 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/200)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugihara (JP 05023094-English Translation).
3. The ground of rejection is maintained as set forth in the previous office action, and incorporated by reference herein.

Response to Arguments

4. Applicant's arguments filed 4/6/10 have been fully considered but they are not persuasive.
5. In the supplemental response, applicant argues that the Sugihara reference does not teach that the soybean protein in the plastic mixture is the claimed 12% by weight in terms of anhydrous solid matter. To support this contention, applicant asserts that "in terms of anhydrous solid matter" should be read as "soybean protein in terms of anhydrous solid matter/plastic mixture". Applicant points to Experimental Example 1 in the specification as showing that the limitation should be read as "% by weight of soybean protein in plastic mixture". However, this section makes no mention of this percentage being based on anhydrous solid matter.

6. The instant specification also describes that the soybean protein constituent of the plastic mixture is 12-38% by weight in terms of anhydrous solid matter (p. 8, lines 1-10). It is believed that the skilled artisan would interpret this statement to refer to the anhydrous solid matter of the mixture rather than the alternative reading which applicant argues for. This is particularly apparent as the examples describe the quantity of soybean protein by weight of the protein in the plastic mixture, that is, two different terms are used. No statement in the specification appears to link these to terms as the same measurement, and it is thus believed that "in terms of anhydrous solid matter" should not be read as "soybean protein/total weight of the plastic mixture". This percentage makes no reference to what is based on the anhydrous solid matter, and thus applicants arguments fail to show that the present claim language differentiates the instant invention from Sugihara.

7. In addition to the interpretation of "in terms of anhydrous solid matter" as above, it is further noted that the 9 parts soy protein/ 88.8 total parts disclosed in Embodiment 1 of Sugihara does not appear to be an upper limit to the quantity of soybean protein used in the plastic mixture. Sugihara discloses that the gelling agent (which in this case is the soy protein) may form 1 to 15 % of the oleaginous composition ([0013]). In Embodiment 1, soy protein is only 8% of the oleaginous composition. Clearly, Sugihara also supports a quantity of soy protein in the plastic mixture which is

much higher, as 15% of the later produced oleaginous mixture may be soy protein. If an oleaginous mixture containing 15% soy protein were produced, it would naturally follow that the quantity of soy protein/total plastic mixture would be higher than 15% (and consequently higher than 12 %). Thus, even if applicant's reading of the term "in terms of anhydrous solid matter" was supported, Sugihara still discloses the use of a quantity greater than 12%.

8. Applicant's arguments, see remarks, filed 1/12/10, with respect to the rejections under 35 U.S.C. 112 have been fully considered and are persuasive. The ground of rejection has been withdrawn.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date

of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien T Tran/
Primary Examiner, Art Unit 1781

/ANDREW KRAUSE/
Examiner, Art Unit 1781
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